

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

William Duclos

DEFENDANTS

Luis Spencer

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Pro se

ATTORNEYS (IF KNOWN)

-10715 MEL

Unknown

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

 1 U.S. Government Plaintiff 3 Federal Question
(U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

Citizen of This State

PTF DEF

Incorporated or Principal Place of Business In This State

PTF DEF

Citizen of Another State

PTF DEF

Incorporated and Principal Place of Business In Another State

PTF DEF

Citizen or Subject of a Foreign Country

PTF DEF

Foreign Nation

PTF DEF

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or ReopenedTransferred from
another district
(specify) 6 Multidistrict LitigationAppeal to District Judge from
Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 510 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 550 Securities/Commodities/Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 881 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 882 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 883 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 884 Energy Allocation Act	<input type="checkbox"/> 884 Freedom of Information Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	HABEAS CORPUS:	<input type="checkbox"/> 885 RSI (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input checked="" type="checkbox"/> 530 General		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 880 Other Statutory Actions
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other		
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 780 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
			<input type="checkbox"/> 781 Emp. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS - Third Party 28 USC 7809

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE.
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

28 USC § 2254

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
□ UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

□ YES □ NO

VIII. RELATED CASE(S) (See instructions):
IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) _____

William Duclos v. Luis Spencer

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ✓ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

*Also complete AO 120 or AO 121
for patent, trademark or copyright cases

10715 MEL

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES

NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES

NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES

NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES

NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES

NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME William Duclos, Pro seADDRESS P.O. Box 43, Norfolk MA 02056

TELEPHONE NO. _____

United States District Court		District Massachusetts
Name William Duclos	Prisoner No. W-48807	Case No. 02-P-1255
Place of Confinement Massachusetts Correctional Institution Norfolk 2 Clark Street, P.O. Box 43, Norfolk MA 02056		
Name of Petitioner (include name under which convicted) William Duclos	Name of Respondent (authorized person having custody of petitioner) V. Luis Spencer	
The Attorney General of the State of: Massachusetts		
<p style="text-align: center;">5 - 10715 MEL</p> <p style="text-align: center;"><i>Referred to MJ L.T. Sorkin</i></p> <p style="text-align: center;">PETITION</p>		
<p>1. Name and location of court which entered the judgment of conviction under attack Worcester</p> <p>County Superior Court</p>		
<p>2. Date of judgment of conviction July 26, 1990</p>		
<p>3. Length of sentence Second Degree life sentence</p>		
<p>4. Nature of offense involved (all counts) Two counts of murder in violation of M.G.L. c. 265, § 1</p>		
<p>5. What was your plea? (Check one)</p> <p>(a) Not guilty <input type="checkbox"/></p> <p>(b) Guilty <input checked="" type="checkbox"/></p> <p>(c) Nolo contendere <input type="checkbox"/></p> <p>If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:</p> <hr/> <hr/>		
<p>6. If you pleaded not guilty, what kind of trial did you have? (Check one)</p> <p>(a) Jury <input type="checkbox"/></p> <p>(b) Judge only <input type="checkbox"/></p>		
<p>7. Did you testify at the trial?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>		
<p>8. Did you appeal from the judgment of conviction?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>		

9. If you did appeal, answer the following:

(a) Name of court _____

(b) Result _____

(c) Date of result and citation, if known _____

(d) Grounds raised _____

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes No

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court Worcester County Superior Court
(2) Nature of proceeding Motion to Withdraw Guilty Plea pursuant to
rule 30 of the Massachusetts Rules of Criminal Procedure
(3) Grounds raised 1) Confession should have been suppressed due to
illegal search of person; 2) Inculpatory statements obtained in

violation of Miranda rights; 3) Whether confession should have been suppressed as product of custodial interrogation with out Miranda warning; 4) Whether appellant should be permitted to withdraw guilty plea based on attorney advice being erroneous

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes No

(5) Result Motion denied

(6) Date of result April 9, 2002

(b) As to any second petition, application or motion give the same information:

(1) Name of court Massachusetts Court of Appeals

(2) Nature of proceeding Appeal of denial of motion for post conviction relief

(3) Grounds raised see ¶ 11.

(4) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes No

(5) Result Order denying motion to withdraw guilty plea and for new trial affirmed

(6) Date of result June 30, 2004

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No
 (2) Second petition, etc. Yes No

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: Petitioner's confession should have been suppressed

because it was the fruit of an illegal search of his person

Supporting FACTS (state briefly without citing cases or law) _____

See attachment page 1

B. Ground two: The petitioner's confession should have been suppressed

because it was tainted by inculpatory statements obtained in violation of Miranda v. Arizona

Supporting FACTS (state briefly without citing cases or law) _____

See attachment page 1

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I. THE PETITIONER'S CONFESSION SHOULD HAVE BEEN SUPPRESSED BECAUSE IT WAS THE FRUIT OF AN ILLEGAL SEARCH OF HIS PERSON - SPECIFICALLY HIS SHOD FEET

The petitioner confessed only after the police ordered him to remove his sneakers, thereby revealing splattered blood on his socks. The removal of petitioner's sneakers constituted a warrantless search. Because the police had no justification for this search, it was illegal and violated the petitioner's constitutional rights, pursuant to the Fourth Amendment and Article 12 and 14 of the Massachusetts Declaration of Rights, to be free from unreasonable searches. Because the petitioner would not have confessed but for this illegal search, the confession should have been suppressed.

II. THE PETITIONER'S CONFESSION SHOULD HAVE BEEN SUPPRESSED BECAUSE IT WAS TAINTED BY INculpatory STATEMENTS OBTAINED IN VIOLATION OF MIRANDA V. ARIZONA

The petitioner's confession should also have been suppressed because it followed immediately after the police had extracted incriminating statements from him by means of custodial interrogation without the benefit of Miranda warnings. Specifically, after the police ordered petitioner to remove his sneakers and discovered blood splattering on his socks, they demanded that he explain how blood had gotten splattered on his socks. PCM Tr. 100-01. They noted that petitioner began shivering and got visibly

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nervous. R.A. 101. Eventually, petitioner stated that he must have gotten blood on his socks when he walked upstairs and found his parents. The police interpreted this as an inculpatory response. Sergeant Mullen indicated he did not believe petitioner's explanation. PCM Tr. 101. Officer Young concluded at this point that "it was apparent that Billy Duclos was involved in this murder." PCM 148. Petitioner then asked to speak to Sergeant Mullen alone and eventually confessed. It is undisputed that the police did not read the Miranda warnings to petitioner until after he asked to speak to Sergeant Mullen alone.

Because the police did not Mirandize petitioner before asking him how splattered blood had gotten on his socks, his initial answer was the product of custodial interrogation obtained in violation of Miranda and therefore would have been inadmissible. Furthermore, because this statement was simply incredible - as the police made clear to petitioner and admitted during the evidentiary hearing on the Post Conviction Motion - it was inculpatory and effectively "let the cat out of the bag." In other words, this un-Mirandized statement led to petitioner's subsequent confession. As a result, all of petitioner's statements following immediately after that inculpatory statement must also be suppressed.

III. PETITIONER'S CONFESSION SHOULD HAVE BEEN
SUPPRESSED BECAUSE IT WAS THE PRODUCT OF A
CUSTODIAL INTERROGATION WITHOUT THE PROTECTION
OF MIRANDA WARNINGS

Petitioner asserts that Sergeant Mullen did not read the Miranda warnings to him until after he had confessed his involvement in the killings. Although Sergeant Mullen testified that he read the Miranda warnings to petitioner immediately before he confessed. PCM Tr. 81, and the motion judge found that he did so, R.A. 77, petitioner maintains that the evidence is to the contrary and as a result, the motion judge's finding was clearly erroneous.

Statements made in response to custodial police interrogation are presumed to be "compelled" within the meaning of the privilege against self-incrimination established by the Fifth Amendment and Article 12 of the Massachusetts Declaration of rights unless the defendant receives prophylactic warnings such compelled statements are inadmissible.

Because petitioner confessed in the context of a custodial interrogation, the police were obliged to give him the Miranda warning prior to his confession. In fact, Sergeant Mullen did not read the Miranda warning to him until after he had confessed. There are several undisputed facts which support this claim and contradict Sergeant Mullen's claim that he read the Miranda warnings to petitioner before he confessed.

First, Sergeant Mullen's claim that he wrote the date and time on the Miranda card when he first read the warnings

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to petitioner but that he did not have petitioner sign the card at that time, PCM Tr. 86, is simply incredible. One would have to accept that Sergeant Mullen took the card from his wallet, placed it on the table, pulled out a pen, and then wrote the date and time on the card, immediately to the left of the blank space designated for petitioner's signature, but did not then hand the pen to petitioner and have him sign the card.

Second, the time noted on the Miranda card - 3:45 a.m. - severely undermines Sergeant Mullen's chronology. Sergeant Mullen admitted that the interview began at 2:15 a.m. and the first statement ended approximately forty-five minutes later. PCM Tr. 77-78. During the next few minutes the police examined petitioner's shoes and socks. Petitioner then confessed to sergeant Mullen alone over the next fifteen to twenty minutes. PCM Tr. 83. Sergeant Mullen then spent a few minutes notifying his partner about the confession. PCM Tr. 84. Sergeant Mullen then returned to the interrogation room and had petitioner and Officer Young sign the card. This chronology would place the time of signing at approximately 3:45 a.m. As noted above, however, Sergeant Mullen claimed that he wrote the time on the card before petitioner had confessed. PCM Tr. 86. If this were the case, the time would have been much closer to 3:00 a.m.. According to this version, all that occurred between the completion of the first statement at 3:00 a.m. and the notation of the

time or the card was the examination of the sneakers and socks. It is simply not possible that petitioner's oral confession began at 3:45 a.m. Clearly, then, the evidence supports petitioner's chronology and contradicts Sergeant Mullen's chronology.

Third, the manner in which the police obtained John Smith's Miranda waiver supports petitioner's chronology. After the police had obtained petitioner's confession, which implicated Mr. Smith, they interrogated Mr. Smith. despite the fact that they had probable cause to arrest Mr. Smith they asked him a single question, they did not begin the interrogation by reading the Miranda warning to him. This fact alone is significant. Clearly, these police officers were not concerned about following the requirements of Miranda even when they indisputably had probable cause to suspect the person they were questioning. Furthermore, when Sergeant Mullen finally did read the Miranda warnings to Mr. Smith, he read them from a card identical to the one he read to petitioner. Immediately thereafter he had Mr. Smith sign the card, he had Officer Young sign the card as a witness, and he wrote the time and date on the card. This routine provides strong corroboration for petitioner's claim that he followed the same procedure with him. In other words, he read the warnings to petitioner from the card and then had petitioner and Officer Young sign the card. Finally, he noted the time and date on the card. the Smith chronology provides especially convincing

support for petitioner's chronology when one considers it in conjunction with the absurdity of sergeant Mullen's claim that he wrote the time on petitioner's Miranda waiver card but then withheld his pen from petitioner before taking his confession.

because petitioner's confessedn in the context of a custodial interrogation and the police did not read the Miranda warnings to him until after he had confessed, his confession was compelled within the meaning of the privilege against self-incrimination established by the Fifth Amendment and Article 12 of the Massachusetts declaration of rights. Further, it would have been inadmissible at a trial and should have been suppressed. Had defense counsel filed a motion to suppress the confession, it would have been allowed and petitioner would not have pled guilty. For this additional reason, petitioner should be permitted to withdraw his guilty plea

IV. PETITIONER SHOULD BE PERMITTED TO WITHDRAW HIS GUILTY PLEA BECAUSE HIS DECISION TO PLEAD GUILTY WAS BASED ON HIS ATTORNEY'S ADVICE THAT THERE WERE NO GROUNDS TO CHALLENGE THE ADMISSIBILITY OF HIS CONFESSION

There existed several strong grounds, based on indisputable facts or very strong circumstantial evidence, to challenge the admissibility of petitioner's confession. yet his attorney did not even file a motion suppress. Indeed, the motion judge found that trial counsel informed petitioner that "a motion to suppress was not a viable option." R.A. 83 As a result, petitoner decided to

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plead guilty to murder and expose himself to a mandatory sentence of life in prison.